

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

LARRY W. CALHOUN,)	
)	
Plaintiff,)	
)	
v.)	No. 1:05CV155 CAS
)	(FRB)
JO ANNE B. BARNHART,)	
Commissioner of Social Security,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

This cause is on appeal from an adverse ruling by the Social Security Administration. Presently pending before the Court is defendant's Motion for Remand (filed December 5, 2005/ Docket No. 10). All pretrial matters were referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b).

In her Motion for Remand, defendant requests that this cause be remanded to the Commissioner for further administrative proceedings. Specifically, the defendant avers that significant portions of the audio recording of the administrative hearing are inaudible, thus preventing the proper preparation of the transcript for inclusion in the record to be submitted to the Court for judicial review. Defendant therefore requests that the cause be remanded pursuant to sentence six of 42 U.S.C. § 405(g),

so that the Appeals Council may instruct an Administrative Law Judge to conduct another hearing *de novo*. Plaintiff has neither responded nor objected to defendant's Motion for Remand, and the time for doing so has passed.

The Court may, on motion of the Commissioner made for good cause shown before she files her Answer, remand the case to the Commissioner for further action. 42 U.S.C. § 405(g). Defendant has shown such good cause here given that in the absence of a complete administrative record, the Court is unable to undergo the judicial review contemplated by 42 U.S.C. § 405(g). Accordingly, because defendant has not yet filed an Answer in this cause and she has shown good cause for remand, the Motion for Remand should be granted.

Therefore,

IT IS HEREBY RECOMMENDED that the defendant's Motion for Remand (Docket No. 10) be granted.

IT IS FURTHER RECOMMENDED that, pursuant to sentence six of 42 U.S.C. § 405(g), this cause be remanded to the Commissioner for further administrative proceedings.¹

The parties are advised that they have eleven (11) days in which to file written objections to this Report and Recommendation. Failure to timely file objections may result in

¹It is the Commissioner's duty to file with the district court the results of the proceedings upon remand. 42 U.S.C. § 405(g).

waiver of the right to appeal questions of fact. Thompson v. Nix, 897 F.2d 356, 357 (8th Cir. 1990).


UNITED STATES MAGISTRATE JUDGE

Dated this 16th day of December, 2005.